

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Harvey Pratt

v.

Civil No. 05-cv-191-JD

Stephen Curry, Commissioner, and
the Attorney General of New Hampshire

O R D E R

Harvey Pratt, proceeding pro se, seeks habeas corpus relief, pursuant to 28 U.S.C. § 2254, from his incarceration following his conviction on a charge of interference with custody in violation of New Hampshire Revised Statutes Annotated ("RSA") § 644:4. The respondents, the Commissioner of the New Hampshire Department of Corrections and the New Hampshire Attorney General, have filed a motion for summary judgment. Pratt moved to strike the factual background section of the respondents' motion and also filed a response to the motion for summary judgment. The respondents did not respond to Pratt's motion.

Although the respondents do not raise the issue, neither the Commissioner nor the Attorney General appears to be the proper respondent in this case. See Rumsfeld v. Padilla, 542 U.S. 426, 435 (2004) ("[T]he default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.")

Pratt alleges that he is in custody at the Northern Correctional Facility in Berlin, New Hampshire. Therefore, the proper respondent would appear to be the warden of that facility.

To address the issue of the proper respondent, Pratt shall file a motion to substitute the warden of the facility where he is being held or a memorandum explaining why the Commissioner and Attorney General are the proper respondents in this case **on or before January 6, 2006**. The respondents shall have ten days from the date Pratt's motion or memorandum is filed to file their response.

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

December 15, 2005

cc: Harvey Pratt, pro se
Nicholas P. Cort, Esquire